



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

Linda S. Adams

Secretary for
Environmental Protection

21 April 2008

Michael L.H. Marsh
Chief Executive Officer
Western United Dairymen
1315 K. Street
Modesto, CA 95354-0917

RESPONSE TO COMMENTS ON TENTATIVE EMERGENCY WAIVER

We have reviewed your 3 April 2008 letter commenting on the tentative *Conditional Waiver of Waste Discharge Requirements for Disaster Related Wastes During a State of Emergency Within the Central Valley Region* (Emergency Waiver). We have addressed each of your comments below. A revised tentative version of the Emergency Waiver reflecting comments received will be posted on our website approximately two weeks before the Board meeting, and a notice mailed to the interested parties list.

Comment #1: "This waiver is the correct direction for emergency preparedness; however, emergency conditions require quick action, especially when dealing with animal mortality. Some sections of the waiver, including finding #5, require notification of the Regional Board before action can begin. Is a response from the Regional Board required for action, and if so, is there a Regional Board contact available 365 days a year? Responses in these situations must occur within 24 hours".

Response: As is stated in Finding No. 5, Section 13269(c) of the California Water Code requires that the Regional Water Board be notified in order for waiver of the requirement to submit a report of waste discharge to apply. When the governor declares a state of emergency, the tentative Emergency Waiver requires this notification within 30 days of the initial discharge by filing a Notice of Intent. For other emergencies not declared by the governor, Condition G.1 of the tentative Emergency Waiver requires a Notice of Intent from the discharger, and that the Executive Officer issue a Notice of Enrollment prior to discharge. In order to accommodate your concern regarding the timing of a response from the Regional Water Board, we will modify Condition G to read as follows (noting that final language may be adjusted and should be reviewed by interested parties once agenda material is posted on our website):

G. Specific Waiver Conditions for Discharges from Emergencies Not Within a Declared Disaster Area

1. In the event of an emergency not within a disaster area declared by the governor, this conditional waiver may be used for waste discharges necessary to mitigate an emergency under either of the following conditions:

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- a. The Discharger submits a Notice of Intent to the Regional Water Board before commencing discharges pursuant to this conditional waiver. Enrollment shall not take effect until the Executive Officer provides the Discharger a written Notice of Enrollment stating that the proposed discharge is eligible for coverage under this conditional waiver.
 - b. An emergency is declared by a state or local government agency and an Incident Commander working through the Statewide Incident Management System and Office of Emergency Services directs that waste be discharged to mitigate the emergency.
2. If coverage under this conditional waiver is invoked through Condition G.1.a, the Discharger shall submit a RWD before commencing discharges if the Executive Officer determines that a proposed discharge is not eligible for coverage.
3. If coverage under this conditional waiver is invoked through Condition G.1.b, the Discharger shall submit a Notice of Intent to the Regional Water Board within **10 days** along with documentation of conditions required under Condition G.1.b.
4. The Discharger shall comply with the applicable conditions of Sections B through F of this conditional waiver.

Comment #2: "We also encourage Regional Board staff to work closely with the Emergency Animal Disposal Workgroup (EADW). The draft waiver raises issues with regulations from other agencies that participate in the EADW. Regional Board staff should participate in the workgroup to workout those issues. Examples include the California Integrated Waste Management Board's prohibition on the composting of mammalian tissue and the State's agricultural code regulations on the transfer of mortalities to any place other than a rendering plant or diagnostic laboratory. The workgroup has been working on these issues for some time, and it would be good if this waiver reflected some of the workgroups findings. As an example, the workgroup is studying the possibility of treating animal mortality through temporary composting on the farm before transporting the material to a landfill or other site for final disposal. The waiver does not seem to address that option."

Response: The tentative Emergency Waiver will be considered for adoption by the Regional Water Board at its 12/13 June 2008 regular meeting. The Emergency Waiver to be considered will reflect our formal process of issuing a tentative order, and revising it as appropriate based on comments received by the comment deadline. The Regional Water Board may also make changes at the Board meeting if additional testimony is received. We will endeavor to address your comments in the version of the Emergency Waiver that will be considered by the Board so that no additional testimony is necessary. Regarding onsite composting of animal mass mortality wastes, this is something that falls outside of the scope of our Emergency Waiver. The California Integrated Waste Management Board's prohibition, as well as the potential water quality and nuisance issues associated with composting of mammalian tissue make consideration of this option premature given the intended timeframe for adoption of the Emergency Waiver.

Comment #3: "Condition A.1. states that this waiver can be extended to a regulated landfill that is not in an area which is under a state of emergency if the landfill is accepting waste from such an area. This became an issue during the summer of 2006 as resources, other than landfills, located in counties that did not declare an emergency were prevented from ramping up their abilities to assist the affected areas. We suggest that rendering plants, incinerators, and other facilities that can assist be included in condition A.1."

Response: A waiver is not needed for animal mass mortality wastes to be taken to a rendering plant or an incinerator. The waiver is needed for landfills since waste discharge requirements for landfills may not allow disposal of large animal carcasses, and also place limitations on liquid content of wastes. The Emergency Waiver would provide conditions under which mass mortality wastes can be accepted at composite-lined landfills during an emergency.

Comment #4: "In addition, condition G.1 requires facilities not within a declared disaster area to submit an NOI before commencing discharges under this waiver. The same comments about the timeliness of Regional Board action apply here. Please clarify between conditions A.1. and G.1. as to what facilities outside of the declared disaster area must do to be covered under this waiver."

Response: Refer to response to Comment #1.

Comment #5: "Condition F.2.a) should be revised to include that the bottom of the landfill should be at the existing ground surface if the 10 foot separation cannot be met at the ground surface."

Response: This condition is necessary at a minimum to protect groundwater. Onsite burial should not be conducted at sites where groundwater is less than 10 feet from ground surface unless the discharger submits a formal report of waste discharge proposing additional protection for groundwater and receives either an individual waiver or waste discharge requirements. Alternatively, the discharger could place soil at the ground surface to provide the required ten feet of separation from groundwater to comply with Condition F.2.a of the Emergency Waiver.

Comment #6: "Condition F.2.g) should be revised as the size of large animal carcasses makes it difficult to limit layers to a thickness 2 feet or less."

Response: We will add language to this condition to allow for the thickness of one animal carcass if it is greater than two feet.

Comment #7: "Condition F.2.i) should allow a layer of a "suitable alternative approved by Regional Board staff" in addition to soil. Also, the thickness of the soil or approved alternative layer should be reduced, if possible, as the availability of cover maybe limited on some sites."

Response: We will add language to this condition to allow an alternative material if approved by Regional Water Board staff.

Comment #8: "Another significant comment relates to the fact that most dairies in the Central Valley are covered under General WDRs that prevent the disposal of animal mortality at the facility. Does this waiver supersede that WDR and allow onsite disposal, if appropriate, in a declared emergency?"

Response: The General WDRs for dairies includes Prohibition No. 6 that is, in part, as follows: "The disposal of dead animals at a dairy facility is prohibited except when federal, state or local officials declare a State of Emergency and where all other options for disposal have been pursued and failed and the onsite disposal complies with all state and local policies for disposal of dead animals." This prohibition is consistent with the tentative Emergency Waiver that requires the Notice of Intent to include a copy of a letter from the California Department of Food and Agriculture or other government agency stating that the mass mortality wastes cannot be transported to a rendering plant or regulated landfill due to health concerns (e.g., disease) when onsite burial is conducted. The prohibition is also consistent with the new language proposed in response to your comment #1.

We appreciate your taking the time to review and comment on the tentative Emergency Waiver. We hope that our responses and proposed changes adequately address your concerns. Please inform us if you intend to provide testimony on this item at the Board meeting. Otherwise, we will place the Emergency Waiver on the Board meeting agenda as an uncontested item since no other comments were received.

If you have any questions, please call me at (916) 464-4622.

WILLIAM BRATTAIN, P.E.
Water Resources Control Engineer
Title 27 Permitting and Mining

cc: Paul Sousa, Western United Dairymen, Modesto